

August 25, 2025

VIA E-MAIL AND REGULAR MAIL

Board of Visitors
George Mason University
4400 University Drive, MSN 3A1
Fairfax, VA 22030

Re: OCR's Findings, Analysis, and Proposed Resolution Agreement in OCR Case
Number 11-25-2338_____

Dear Rector Stimson, Vice Rector Meese, and Visitors:

I am writing to you on behalf of Dr. Washington, as his counsel, to respond to the purported findings in OCR's August 22 letter in Case Number 11-25-2338, and to ensure that you and Dr. Washington are working with the same factual context as you consider the University's response. It is glaringly apparent that the OCR investigation process has been cut short, and "findings" have been made in spite of a very incomplete fact-finding process, including only two interviews with university academic deans. As I am sure you agree, the facts are critically important here, and the OCR's letter is evidence that they have not spent sufficient time finding critical and materials facts.

As detailed below, OCR's letter contains gross mischaracterizations of statements made by Dr. Washington and outright omissions related to the two-plus year DEI review process that the Board of Visitors and Dr. Washington engaged in, culminating in the 2024 "The Mason Way" report and the report outlining GMU's modifications to its DEI infrastructure, presented to a committee of the Board on April 17, 2025. GMU stands in rarified air when it comes to universities' responses to changes in law and leadership related to DEI practices. This important work is completely ignored in the OCR's recitation of relevant facts. Further, the draft Resolution Agreement, in particular its demand that Dr. Washington apologize to the Mason community for promoting unlawful discriminatory hiring practices, would be falsely admitting to conduct that did not occur and would open GMU to further legal risk in concurrent and future investigations by other agencies. We offer the actual facts below in rebuttal to the OCR's claims.

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To be clear, per OCR's own findings, no job applicant has been discriminated against by GMU, nor has OCR attempted to name someone who has been discriminated against by GMU in any context. Therefore, it is a legal fiction for OCR to even assert or claim that there has been a Title VI or Title IX violation here.

I hope you share my deep concern about the fact that OCR is even targeting George Mason University and its leadership in the first place. For OCR to single out GMU for alleged discriminatory conduct – when it admits more than 90% of its student applicants, has no record of selectively denying faculty opportunities, and in fact boasts a faculty community nationally respected for its viewpoint diversity – borders on the absurd. And for OCR to pressure the Board to take action against Dr. Washington, when he, with clear Board engagement and support, has led GMU through a record-setting period of fundraising and financial success and a surge in the *Wall Street Journal* rankings – from 186 to 74 nationally (and from 45 to 30 among public universities) – is unacceptable.

OCR's Claims

OCR's letter makes a number of allegations that use incomplete information, selectively excerpted statements, and leaps of logic unsupported – and sometimes disproven – by the information they present.

- **Claim 1:** OCR claims that an April 15, 2021 message from Dr. Washington to the Mason community demonstrates he specifically intended for University staff to treat applicants differently on the basis of race, national origin, or sex. The message was a follow-up to a series of town halls the University hosted as part of its Anti-Racism and Inclusive Excellence (ARIE) Task Force work, launched in 2020 in the wake of George Floyd's murder to examine how the university could better ensure its systems and practices do not perpetuate discrimination. The message specifically took up one question from a town hall:

I am concerned about what it really means to hire faculty and staff that 'reflect the student population.' The university's job as an R1 institution is to hire the best faculty and administrators, period. The type of target hiring of minorities proposed through ARIE is both prejudicial and illegal. I would like to have this addressed.

OCR offers a highly selective description of Dr. Washington's response to that question. Per its description, "The President said that the University's 'North Star' is

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that the University should reflect the rich diversity of the student body,” as a way to suggest his support for unlawful race-based hiring “in order to have the University reflect the student population.”

- **The facts:** The fuller message shows that Dr. Washington espoused a much more general aspiration for University diversity, and stressed that any diversity efforts should be carried out within the confines of the law. His “North Star” quote reads:

First and foremost, all organizations need a North Star – a vision of what their best can be. With respect to diversity and inclusion, Mason’s North Star is that this university should reflect the rich diversity of our students, **the broader Commonwealth of Virginia (whose tax dollars support us all), and the nation. This is not code for establishing a quota system.** (Emphasis added)

When one reads the full passage, Dr. Washington’s intent to ensure compliance with the law on nondiscrimination, rather than support unlawful discrimination, could not be clearer.

Dr. Washington’s message went on to say that “Our diversity, equity and inclusion initiative should also be aligned with the ‘One Virginia Plan,’ now the law in Virginia.” This is important context: At the time of his message, the Virginia General Assembly had recently passed a law mandating that heads of state agencies, including state universities, “establish and maintain a comprehensive diversity, equity, and inclusion strategic plan” that “integrate[s] . . . diversity, equity, and inclusion goals into the agency’s mission, operations, programs, and infrastructure to enhance equitable opportunities for the populations served by the agency and to foster an increasingly diverse, equitable, and inclusive workplace environment.” Va. Code Ann. § 2.2-602 (2025). That law, which is still in effect, also requires the state agency’s plan to “proactively address potential barriers to equal employment opportunities pursuant to federal and state equal employment opportunity laws” and “promote diversity and equity in hiring, promotion, retention, succession planning, and agency leadership opportunities.” *Id.* This legal context, cited in Dr. Washington’s message, conveys his clear intent for GMU to pursue diversity in hiring keeping with the law.

- **Claim 2:** OCR also claims that, in that same April 15, 2021 message, Dr. Washington made a statement suggesting that faculty should be hired on the basis of race. The statement is as follows:

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If you have two candidates who are both “above the bar” in terms of requirements for a position, but one adds to your diversity and the other does not, then why couldn’t that candidate be better, even if that candidate may not have better credentials than the other candidate?

- **The facts:** The OCR selectively excerpted this statement to leave out Dr. Washington’s express admonition, quoted above and offered just sentences before this, to make hiring decisions in accordance with the law. His question must be read in that context of compliance. Moreover, his question was just that: a question, offered to provoke dialogue within the university community, as should be expected of a faculty member and academic leader of a university. The question does not suggest hiring minority candidates of lesser credentials, but rather considering how two equally qualified candidates may contribute differently to the campus. It was not a statement of policy, and OCR can point to no policy enacted as a result of it, nor any discriminatory hiring decision made based on it. It should be highlighted that Dr. Washington is not directly involved in the evaluation of faculty candidates.

OCR further errs by repeatedly conflating references to “diversity” in this and other University communications with “race” or “racial diversity.” The University defines diversity broadly, not limiting it to race or racial diversity. As the Board knows, in George Mason’s Strategic Plan, diversity is referenced as “diversity of origin, identity, circumstance, and thought.” In our brand pillar, diversity is referenced in this ways:

We are the sum of our rich diversity of origin, identity, circumstance, and thought. Diversity defines our scholarly excellence because it allows us to see the world more completely, to think more creatively, and to learn more effectively. More than that, we can create new knowledge and solutions that are not even possible without such diversity.

And in GMU guidance about creating Inclusive Excellence Plans (IEPs), diversity is defined as: “Individual differences (e.g., personality, prior knowledge, and life experiences) and group/social differences (e.g., race/ethnicity, class, gender, sexual orientation, country of origin, and ability as well as cultural, political, religious, or other affiliations).” At Mason, the term “diversity” is never reducible to the set of protected characteristics at issue in OCR’s inquiry.

- **Claim 3:** OCR claims that a July 23, 2020 post on GMU’s website by Dr. Washington, in which Dr. Washington announced the ARIE Task Force and listed policies and

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practices that the task force would examine, similarly demonstrated an intent for University staff to use race and other protected characteristics in hiring, promotion, and tenure decisions.

The post stated that the ARIE Task Force would develop “specific recommendations for the renewal, promotion, and tenure processes that address implicit bias, discrimination, and other equity issues to support faculty of color and women in their professional work” and “specific mechanisms in the promotion and tenure process that recognize the invisible and uncredited emotional labor that people of color expend to learn, teach, discover, and work on campus.”

- **The facts:** This post did not establish or alter any University policies, and the ARIE Task Force’s recommendations did not ultimately include many of the hypothetical mechanisms mentioned in the post. Like the April 15, 2021 message, this post was not a statement of policy, and OCR can point to no policy enacted as a result of it, nor any discriminatory hiring decision made based on it.
- **Claim 4:** OCR claims that all of Dr. Washington’s statements above, taken together, have “resulted in the university using race and other protected characteristics in hiring, promotion, and tenure decisions.” The examples it points to are statements made by two schools at GMU as part of their school-level hiring processes:
 - **Statement A:** A statement by the Schar School of Public Policy (“School 1”) in its 2021 Inclusive Excellence Plan touting that, in five years, 52% of its new full-time faculty hires were minorities and 65% were women, and that it had a goal to continue to hire minorities at “approximately the ratio we have achieved since Fall ’16.” The implication here is that Dr. Washington played a material role in this school’s (department’s) faculty hiring.
 - **The facts:** This IEP was submitted in April 1, 2021, two weeks before Dr. Washington’s April 15 community message, so any goals it espouses are not the result of Dr. Washington’s message. IEPs also are not hiring policy for any academic unit; they are an extension of the strategic plan. Most importantly, the statistics cited refer to hires made from *Fall 2016 through 2020*, the year Dr. Washington was hired. OCR does not point to any evidence of School 1 making discriminatory hiring decisions as a result of Dr. Washington’s words or deeds.

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- **Statement B:** A faculty search committee report from the College of Humanities and Social Sciences (“School 2”) that included a prompt asking, “How did you evaluate different contributions to diversity, equity, and inclusion?” and a committee response indicating that candidates were evaluated on (1) their overall scholarship, (2) whether they meet the University’s diversity goals, and (3) their primary area of research focus.
- **The facts:** First, faculty hiring processes are designed and hiring decisions are made at the school level. OCR can show no link between these school-level documents and Dr. Washington’s statements. Moreover, it is not unlawful for faculty search committees to consider candidates’ contributions to diversity, as long as they do so consistent with nondiscrimination laws. To analogize to the admissions context, as OCR does, the Supreme Court has stated that universities can consider “how race affected [an applicant’s] life, be it through discrimination, inspiration, or otherwise.” *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College (SFFA)*, 600 U.S. 181, 230 (2023). OCR can point to no instance in which School 2’s process resulted in a discriminatory hiring decision.
- **Statement C:** An “Inclusive Search Faculty Plan” from School 2 that included a statement that the search committee’s deliberations about candidates “included, but was not limited to demographic diversity.”
- **The facts:** Again, faculty hiring decisions happen at the school level; the University President is not directly involved in the evaluation of candidates. And a deliberation about candidates is not a hiring decision or hiring policy.
- **Claim 5:** OCR attributes to Dr. Washington the GMU policy of allowing competitive search waivers, by which, “in very special circumstances,” “the University may choose to waive the competitive search process when there is an opportunity to hire a candidate who strategically advances the institutional commitment to diversity and inclusion.”
- **The facts:** Any policy regarding competitive search waivers predates Dr. Washington’s arrival at GMU, and the language OCR uses to describe the policy is not language that we can find on any current or discontinued university web page. Additionally, Dr. Washington does not see or approve these waivers; they have to be in compliance with the Virginia code and they are by definition extremely rare. Current practice, with

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lengthy descriptions of requirements for consideration of waivers, can be found here: <https://oacc.gmu.edu/search-waiver-procedures>.

- **Claim 6:** OCR claims, based on an interview with one GMU academic unit administrator, that Dr. Washington “was engaging in a kind of surveillance of the academic unit’s hiring decisions.”
- **The facts:** Dr. Washington was never interviewed by OCR at any point prior to its rendering of its findings, so he was not given an opportunity to respond to this allegation. Our understanding is that OCR interviewed only two deans out of GMU’s ten colleges and schools. While we are not questioning the sincerity of this single administrator’s recollections, OCR cannot corroborate it with any data from documents or testimony other institutional leaders. In its letter, OCR concedes that the administrator it interviewed acknowledged that he has not personally overseen any personnel decisions that used race, national origin, or sex as a factor. The leap from one administrator’s impression of surveillance, which by their own admission did not amount to any changed conduct, to OCR’s suggestion of unlawfully influenced faculty hiring is woefully insufficient to make any finding, much less one as serious as this.
- **Claim 7:** OCR alarmingly claims that “the evidence shows that” Dr. Washington “forced GMU academic units” to choose between applicants’ race and their qualifications.
- **The facts:** No statement made by Dr. Washington resulted in a policy change that forced academic units to make unlawful discriminatory hiring or promotion choices during his tenure. OCR itself makes clear that faculty hiring, per GMU’s Faculty Handbook, is not controlled by the President, and that faculty promotion decisions are ultimately voted on by the Board, not the President. As OCR writes, “Only the Board of Visitors can promote a faculty member to a tenure position, or a promotion from associate professor to professor.” OCR’s insinuation that any of the statements it quotes had an unlawful effect is simply false. Indeed, to the contrary, Dr. Washington and the Board continually worked to ensure that GMU was in compliance with current law and guidance on nondiscrimination (see below).

George Mason’s Record of Compliance with Nondiscrimination Laws

OCR’s letter characterizes GMU, during Dr. Washington’s tenure, as having actively supported unlawfully discriminatory practices, but it is important for us to remember all that

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the Board and Dr. Washington have accomplished together to ensure compliance with evolving law and guidance on nondiscrimination. The record is clear that the Board and Dr. Washington have been actively working to address new legal understandings and ensure compliance.

OCR's analysis draws heavily on *SFFA*, which only applies to student admissions, not to hiring decisions, and so is not germane to OCR's inquiry into hiring practices. Nevertheless, the Board will remember that, soon after the ruling came down, GMU took the proactive step of examining its implications for its diversity goals more generally. This examination unfolded in the midst of an ongoing university-wide initiative that had begun in 2020, in the wake of George Floyd's murder, to identify places where GMU could improve how it addresses past discrimination and support its diverse community.

From Fall 2023 through Fall 2024, GMU, with the active participation of the Board of Visitors, took a number of steps to stay ahead of potential changes in law. These included the Board's formation of an ad hoc committee on DEI in September 2023, on which Visitors Meese and Witeck served with distinction, that comprehensively examined GMU's DEI infrastructure. The results of this committee's work and other work in concert with GMU leadership included:

- Ending the Anti-Racism and Inclusive Excellence (ARIE) Initiative
- Eliminating six diversity-related positions and restructuring 11 others
- Dissolving the Center for Culture, Equity, and Empowerment
- Discontinuing the use of Inclusive Excellence Plans (IEPs)
- Pausing implementation of a new curricular requirement with a diversity focus

The Board, Dr. Washington, and university leadership, worked in collaboration to take all of these actions well before President Trump took office and the federal government began investigating university hiring practices. Similarly, in September 2024, prior to both the 2024 election and the Trump administration's anti-DEI directives, the Board will recall that Dr. Washington requested that the State Council of Higher Education for Virginia (SCHEV) conduct a third-party review of Virginia universities' DEI efforts and expenditures. In addition, it was Dr. Washington who in a Board meeting agreed with an external review of Mason's DEI modifications.

This year, as the President and federal agencies have issued new federal mandates and guidance around workplace discrimination and diversity efforts, GMU has moved swiftly to ensure continued compliance. For example:

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- After President Trump issued Executive Order 14173, rescinding Executive Order 11246, GMU discontinued its use of affirmative action programs for women and minorities that had been mandated under EO 11246.
- GMU also dissolved its Office for Diversity Equity and Inclusion and created the Office of Access, Compliance, and Community to better align with federal guidance contained in President Trump’s EO and the Department of Education’s Dear Colleague letter. As part of this change, it reviewed and amended all positions in the Office to align with its new functions.
- GMU also reviewed the use of required diversity statements on job postings and provided guidance that they are now prohibited, and it ceased promotion of third-party opportunities that involve race-conscious criteria.

In sum, well before the federal government turned its attention to GMU, the university, under Dr. Washington and the Board’s leadership, undertook a robust effort to stay ahead of the curve and make many of the changes now being demanded of universities. And these are not “mere cosmetic changes”: they include the elimination or restructuring of at least 17 positions associated with DEI,¹ the dissolution of several diversity-related programs and initiatives, and the halting of processes that were previously legally mandated. These changes, submitted to the Board in April 2025, have been made with significant input from campus stakeholders and an unwavering commitment to equal opportunity under law. As Dr. Washington has said, “It is simply the Mason way, and in my experience, it has not discriminated based on race, color, national origin, or otherwise. Our diversity efforts are designed to expand opportunity and build inclusive excellence – not to exclude or advantage any group unlawfully.”²

Moving Forward Together

The journey toward striking any agreement with OCR must begin with a shared set of facts, which we do not yet have. More effort is vital to ensure that they have both the pertinent facts and the proper context in which to place them. With the full picture, it becomes clear that Dr.

¹ The complaint attached to the July 10 DOE OCR letter claims that there are 69 DEI positions at GMU, but as the Board knows, that number – put forward by the Heritage Foundation – has been debunked by the aforementioned third-party review administered by SCHEV. SCHEV’s review identified 19 positions associated with diversity, equity, and inclusion and compliance at GMU.

² <https://president.gmu.edu/news/2025-07/update-university-response-investigations>.

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Washington and the Board have worked together diligently to comply with the law. Far from needing to apologize, you all have a shared record to be proud of.

If the Board entertains OCR's demand that Dr. Washington personally apologize for promoting unlawful discriminatory practices in hiring, promotion, and tenure processes, it will undermine GMU's record of compliance. An apology will amount to an admission that the university did something unlawful, opening GMU and the Board up to legal liability for conduct that did not occur under the Board's watch. In addition, OCR's recommended resolution will not bind other agencies, like the Department of Justice, from enacting penalties based on this admission.

Acquiescing to OCR's demand will also undermine the incredible record of success you and Dr. Washington have built together during Dr. Washington's tenure: skyrocketing rankings, rising enrollment and academic standards, state-leading enrollment of veterans, and record fundraising and appropriations increases, to name a few.

You and Dr. Washington have an important story to tell together – of hard work, over many years, to bring George Mason to new heights, all while keeping the university on the right side of the law. The OCR letter should not be viewed as a moment to throw that away but to tell that amazing story with full force.

On behalf of Dr. Washington, I am requesting the opportunity to take part in any discussion over how to respond to OCR's demands. I look forward to working with you to resolve this matter in a way that makes the George Mason community proud.

Very truly yours,

A handwritten signature in blue ink, reading "Douglas F. Gansler".

Douglas F. Gansler

DFG

cc: Dr. Gregory Washington
President, George Mason University
president@gmu.edu

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Michael A. Fragoso
Partner, Torridon Law PLLC
mfragoso@torridonlaw.com

Anne Gentry
University Counsel, George Mason University
kgentry2@gmu.edu